

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MELANIE A. OCHS,

Petitioner,

vs.

WARDEN JO GENTRY, et al.,

Respondents.

Case No. 2:16-cv-00982-JCM-CWH

ORDER

Petitioner has paid the filing fee. She has submitted a motion for appointment of counsel. Petitioner is unable to afford counsel, and the issues presented warrant the appointment of counsel. See 18 U.S.C. § 3006A(a)(2)(B).

Petitioner has submitted a motion to compel production of records. The court denies this motion as moot because the court is appointing counsel, who will file all necessary motions from now onward. However, based upon the court's own calculations and petitioner's allegations in the petition, the timeliness of this action likely will be an issue. Petitioner alleges that her counsel appointed for the state post-conviction proceedings did not inform her of the decision of the Nevada Supreme Court at that time. She also alleges that she did not learn about that decision until more than a year after the decision was issued. She wants the prison's records of incoming mail from August 26, 2014, to September 26, 2014, to show that the prison never received anything addressed to her from her counsel. If the records exist, then they could be evidence relevant to a determination whether equitable tolling is warranted.

1 Petitioner has submitted a motion for stay and abeyance. The court denies this motion as
2 moot because the court is appointing counsel, who will have the opportunity to file an amended
3 petition.

4 IT IS THEREFORE ORDERED that the clerk of the court file the petition, the motion for
5 appointment of counsel, the motion to compel production of records, and the motion for stay and
6 abeyance. The last two motions are in the court's docket at ECF No. 1-4 and 1-5, labeled as notices.

7 IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel is
8 **GRANTED**. The Federal Public Defender is provisionally appointed to represent petitioner.

9 IT IS FURTHER ORDERED that the Federal Public Defender shall have thirty (30) days
10 from the date that this order is entered to undertake direct representation of petitioner or to indicate
11 to the court his inability to represent petitioner in these proceedings. If the Federal Public Defender
12 does undertake representation of petitioner, he shall then have sixty (60) days to file an amended
13 petition for a writ of habeas corpus. If the Federal Public Defender is unable to represent petitioner,
14 then the court shall appoint alternate counsel.

15 IT IS FURTHER ORDERED that neither the foregoing deadline nor any extension thereof
16 signifies or will signify any implied finding of a basis for tolling during the time period established.
17 Petitioner at all times remains responsible for calculating the running of the federal limitation period
18 under 28 U.S.C. § 2244(d)(1) and timely asserting claims.

19 IT IS FURTHER ORDERED that the clerk shall add Adam Paul Laxalt, Attorney General
20 for the State of Nevada, as counsel for respondents.

21 IT IS FURTHER ORDERED that the clerk shall electronically serve both the Attorney
22 General of the State of Nevada and the Federal Public Defender a copy of the petition and a copy of
23 this order.

24 IT IS FURTHER ORDERED that respondents' counsel shall enter a notice of appearance
25 within twenty (20) days of entry of this order, but no further response shall be required from
26 respondents until further order of the court.

27 IT IS FURTHER ORDERED that any exhibits filed by the parties shall be filed with a
28 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF attachments

1 that are filed further shall be identified by the number or numbers (or letter or letters) of the exhibits
2 in the attachment. The hard copy of any additional state court record exhibits shall be
3 forwarded—for this case—to the staff attorneys in Las Vegas.

4 IT IS FURTHER ORDERED that the motion to compel production of records is **DENIED**
5 as moot.

6 IT IS FURTHER ORDERED that the motion for stay and abeyance is **DENIED** as moot.

7 DATED: July 14, 2016.

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11 JAMES C. MAHAN
12 United States District Judge
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